No. 94232-3

COURT OF APPEALS NO. 75204-9-I

SUPREME COURT OF THE STATE OF WASHINGTON

UNIVERSITY OF WASHINGTON,

Respondent,

v.

CITY OF SEATTLE, DOCOMOMO US – WEWA, HISTORIC SEATTLE, and WASHINGTON TRUST FOR HISTORIC PRESERVATION,

Appellants.

RESPONDENT'S RESPONSE TO WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS AND FUTUREWISE

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I. INTRODUCTION

The University of Washington submits this combined Response to the amicus briefs submitted by the Washington State Association of Municipal Attorneys (WSAMA) and Futurewise on behalf of Appellants.

Amici, particularly WSAMA, present a false dichotomy, framing this case as a contest between total local control over university campuses that WSAMA and Appellants seek, and total university freedom from local regulation that WSAMA and Appellants accuse the University of seeking. The University, however, does not argue for such an outcome, or for a bright-line rule. Rather, this case is about a specific ordinance – the City of Seattle's Landmark Preservation Ordinance (LPO) – which is uniquely onerous, not only in comparison to other landmark ordinances, but also in comparison to other City of Seattle regulations. If applied to the campus, the LPO will uniquely usurp the Regents' authority over the campus, and the University seeks only a declaration that the City cannot apply the LPO to the campus.

The ultimate issue before the Court requires only the application of the established test of legislative intent.[1] Yet WSAMA does not even

[1] There are multiple other grounds for affirming the trial court, in addition to the grounds discussed in this response. As discussed in Respondent's brief to Division I, the University is not a corporation within the meaning of the LPO; the City has not adopted the LPO pursuant to the Growth Management Act (GMA); and the University is not a "state agency" within the meaning of RCW 36.70A.103.

acknowledge, let alone address, the test set forth in *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council (EFSEC)*, 165 Wn.2d 275, 197 P.3d 1153 (2008), that WSAMA's argument fails to satisfy. There is no evidence that the Legislature intended for its general grant of authority to local governments in RCW 36.70A.103 to prevail over 150 years of multiple, specific, statutory grants of authority to the Board of Regents. The LPO cannot be reconciled with the Regents' authority and, therefore, must yield.

The Futurewise Brief focuses largely on arguments the University has already briefed. Below, the University responds to Futurewise's new argument: the unsupported and incorrect assertion that the Regents are unaware of adaptive reuse.

For all the reasons discussed below, the LPO must yield to the Board of Regents' statutory authority to decide how the campus should be used to fulfill the University's purpose and mission.

II. LEGAL AUTHORITY AND ARGUMENTS

A. WSAMA ignores the Legislature's 1999 affirmation that, even under the GMA, the term "full control" retains the meaning it had when this Court decided *State v. Seattle* in 1980.

In 1999, the Legislature reaffirmed the Regents' authority, including the power to raze University buildings. WSAMA attempts to minimize the effect of the Legislature's consolidation of the Regents'

authority in Chapter 346 of the Laws of 1999, arguing that the statute only has relevance to the University's management of the Metropolitan Tract. WSAMA Br. at 14. But the Legislature's re-affirmance of the University's "full control" over the Metropolitan Tract, after the Legislature's adoption of Section 103 of the GMA, defeats WSAMA's (and Appellants') argument that the University had lost this control. WSAMA's argument leads to the absurd result of "full control" meaning different things in different sections of the Act.

The 1999 Act demonstrates that the Legislature intends for the phrase "full control" to include the power to raze buildings. The Legislature stated its purpose in section 1 of the Act:

> **Sec. 1.** The purpose of this act is to consolidate the statutes authorizing the board of regents of the University of Washington to control the property of the university. **Nothing in this act may be construed to diminish in any way the powers of the board of regents to control its property including, but not limited to, *the powers* now or *previously set forth in RCW 28B.20.392*** through 28B.20.398.

CP 408 (emphasis added). The powers previously set forth in RCW 28B.20.392 included the authority to "raze" buildings despite the City's LPO – the power this Court affirmed in *State v. Seattle*, 94 Wn.2d 162, 615 P.2d 461 (1980). WSAMA argues that the Legislature's express statement of intent in Chapter 346 of the Laws of 1999 "is of no moment."

WSAMA Br. at 14. But it demonstrates that, even if one assumes that RCW 36.70A.103, enacted in 1991, somehow diminished the authority of the Board of Regents over University property, the Legislature expressly stated eight years later that the Regents' powers being consolidated in the 1999 Act included "powers now *or previously* set forth" – including the powers affirmed in *State v. Seattle*.

In section 5 of the 1999 Act, the Legislature accomplished its purpose to consolidate the Regents' previously enumerated powers by replacing its previous enumeration of those powers in RCW 28B.20.392 with the term "full control," as codified today in RCW 28B.20.395:

> In addition to the powers conferred under the original deeds of conveyance to the state of Washington and under existing law, and subject to RCW 28B.20.382, the board of regents has full control of the university tract as provided in this chapter . . .

Laws of 1999, ch. 346, § 5.

WSAMA's proposal that this Court disregard the Legislature's intent leads to an absurd result: that the term "full control" means different things in different sections of the same chapter of the RCW. *See G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309-10, 237 P.3d 256 (2010) (enacted statement of intent is part of plain reading of statute). Under WSAMA's reading, "full control" means "full control" when applied to the University Tract but means just the opposite when applied

to the University campus. According to WSAMA (and Appellants) the term "full control" as applied to the campus means, in effect, "such control as may be is left to the Regents after the City has applied the LPO to the campus." The Legislature has never expressed an intent that "full control" means much less than full control when applied to the campus, which the Regents operate to fulfill the University's core academic mission to educate the people of our State.

WSAMA's argument asks this Court to ignore the plain meaning of the term "full control" in order to achieve an absurd result with regard to the campus. *See State v. Barbee*, 187 Wn.2d 375, 389, 386 P.3d 729 (2017), *as amended* (Jan. 26, 2017) ("When engaging in statutory interpretation, the court must avoid constructions that 'yield unlikely, absurd or strained consequences.'"). As set forth in the following three subsections, WSAMA's argument also asks this Court to ignore the statutory history of the Regents' authority over University property; to ignore this Court's decision in the only case construing Section 103 of the GMA, *Residents Opposed*, 165 Wn.2d 275; and to read far more into the now-defunct High Education Coordinating (HEC) Board than the Legislature intended.

1. Understanding the Legislature's 150-year history of statutory grants of authority to the Regents is necessary to a "plain language" analysis of legislative intent.

A decision that allows the City to apply the LPO to the University campus, and thus allow the City to decide what can and cannot be built on the campus, runs contrary to 150 years of consistent legislative intent that WSAMA asks this Court to simply "disregard." WSAMA Br. at 9. Since the 1860s, the Legislature has entrusted governance of the University to the Regents, and examination of that statutory history is a necessary part of a plain language analysis of the Regents' "full control" over University property. Such a plain language analysis requires an examination of "all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). This statutory history is not, as WSAMA suggests at pages 7-9 of its Brief, the sort of "legislative history," such as bill reports or floor speeches, that a court examines only in the case of ambiguous statutory language. *Cf. Campbell & Gwinn*, 146 Wn.2d at 12. The University of Washington's 150-year-long statutory history is unique, even in comparison to the statutory history of other state institutions of higher education, and this unique history must be taken into account when discerning legislative history regarding the University's governance.

In the 1860s, when the Legislature created the University of Washington, it vested the University's "government" in the Board of Regents. *See* T.O. Abbott, *Real Property Statutes of Washington Territory* 438 No. 583 §§ 1-2 (1862); CP 218, 358. Since then, the Legislature has made at least five specific grants of authority to the Board of Regents to govern University property:

1) In 1909, the Legislature recognized the Regents' "full control of the university and its property of various kinds . . . ." Laws of 1909, ch. 97, § 5; CP 207, 218, 371.
2) In 1947, the Legislature clarified the Regents' authority over the Metropolitan Tract, granting the Regents authority to "raze, alter, remodel or add to existing buildings" within the Metropolitan Tract. Laws of 1947 ch. 284, § 2(b)(1)-(2); CP 208-9, 219, 375.
3) In 1957, the Legislature granted and codified in RCW 28B.20.700 the Board of Regents' authority "to provide for the construction, completion, reconstruction, remodeling, rehabilitation and improvement of buildings and facilities authorized by the legislature for the use of the University." Laws of 1957, ch. 254, § 1; CP 219, 385.
4) In 1969, the Legislature re-codified the Board of Regents' existing authority in RCW 28B.20.130, granting the Regents "full control of the university and its property of various kinds." Laws of 1969, 1st ex. sess., ch. 223, § 28B.20.130; CP 219, 430.
5) In 1999, the Legislature consolidated the Regents enumerated powers over the Metropolitan Tract by giving the Regents "full control" of the Tract. Laws of 1999, ch. 346; RCW 28B.20.395; CP 3, 408, 530, 580.

In 1980, this Court held that the LPO does not apply to University property within the Metropolitan Tract because "[t]he legislature has clearly shown its intent that the decision-making power as to preservation or destruction of Tract buildings rests with the Board of Regents," relying in part on RCW 28B.20.392. *See State v. Seattle*, 94 Wn.2d at 165-66. And in 1999, the Legislature stated that its consolidation of the Regents' enumerated powers over the Tract into "full control" over the Tract may not be construed to diminish the very powers that this Court recognized in *State v. Seattle*. *See* Laws of 1999, ch. 346; RCW 28B.20.395.

Chapter 28B.20 RCW gives the Regents "full control" over University property generally, RCW 28B.20.130(1), and "full control" over the Tract specifically, RCW 28B.20.395. As Section II. A.2 makes clear below, the Legislature has never expressed an intent that "full control" in RCW 28B.20.130 means that the Regents can raze campus buildings only if the City agrees after application of the LPO, but that "full control" in RCW 28B.20.395 means, as this Court determined in *State v. Seattle*, that the Regents can raze buildings within the Tract regardless of the LPO.

2. WSAMA's Brief ignores the sole case that interprets Section 103 of the GMA, which holds that a general rule does not supersede prior, specific grants of authority unless the Legislature intends otherwise.

The lone case that interprets RCW 36.70A.103 squarely concludes that the statute creates a general rule that does *not* amend prior specific grants of authority. *Residents Opposed*, 165 Wn.2d at 309-10. Yet, even as WSAMA touts the purportedly far-reaching effects of the statute, its Brief includes not a single citation to, or discussion of, the case.

The *Residents Opposed* case relied on the well-established rule that statutes that are *in pari materia* must be read together, and quotes with approval an earlier statement from the *Wark* case:

> It is the law in this jurisdiction, as elsewhere, that where concurrent general and special acts are in pari materia and cannot be harmonized, the latter will prevail, unless it appears that the legislature intended to make the general act controlling.

Residents Opposed, 165 Wn.2d at 309 (quoting *Wark v. Wash. Nat'l Guard*, 87 Wn.2d 864, 867, 557 P.2d 844 (1976)).

By arguing that RCW 36.70A.103 limits RCW 28B.20.130, WSAMA and Appellants necessarily argue that the two are *in pari materia*. The LPO cannot be harmonized with the Legislature's specific grant to the Regents of "full control" over the campus, and WSAMA (and Appellants) therefore have the burden of demonstrating that the

Legislature intended to make the general rule in Section 103 controlling over its specific grant of authority to the Regents in RCW 28B.20.130. Appellants have not met this burden, and cannot meet it, because no such evidence exists.

The Legislature has repeatedly granted and reiterated the specific authority of the Regents to govern University property, serving the "discrete and specific function," in the language of *Residents Opposed*, 87 Wn.2d at 309-11, of determining what actions are in the best interests of the University and the students it serves. *See supra*, Section II. A.1. All of these specific grants of authority were made before the Legislature enacted Section 103 of the GMA, and under *Residents Opposed* they operate as exceptions to the general rule of Section 103 of the GMA. WSAMA and Appellants have not met their burden to demonstrate the Legislature intended otherwise when it enacted Section 103 of the GMA or, as explained below, when it created the HEC Board and amended RCW 28B.20.130 to include "except as otherwise provided by law."

3. WSAMA reads far too much into the 1985 Act creating the HEC Board, which had no effect on the Regents' authority to control University property.

WSAMA devotes three pages of its brief to arguing that the Higher Education Coordinating Board exercised more authority than it did, for a different purpose than the Legislature assigned to it. As its name

suggested, the now-defunct HEC Board coordinated educational planning among the state's institutions of higher education. It never detracted from the Regents' full control over University property, particularly on the main campus. The Legislature itself described its limited purpose for creating the HEC Board:

> The purpose of the board is to provide ***planning, coordination, monitoring, and policy analysis*** for higher education in the state of Washington ***in cooperation and consultation with*** the institutions' ***autonomous governing boards*** and with all other segments of postsecondary education, including but not limited to the state board for community college education and the commission for vocational education. The legislature intends that the board represent the broad public interests above the interests of the individual colleges and universities.

Laws of 1985, ch. 370, § 3 (emphasis added); CP 404. The Legislature created the HEC Board to help the governing boards of the state's various institutions of higher education coordinate their programs with one another. The Legislature used the word "autonomous" to describe the various governing boards in the 1985 Act – which would be an odd choice of words if WSAMA's argument were correct that the intent was to "claw back" authority from the Regents. WSAMA Br. at 11.

WSAMA also appears to argue that the Legislature's mandate to represent "broad public interests" gave the HEC Board sweeping authority over the colleges and universities. *See* WSAMA Br. at 13. But the bill's

full text demonstrates that the "broad public interest" mentioned in the statute was the public's interest in having the state's educational institutions coordinate their offerings for the benefit of the public, not the non-existent interest in subordinating university control of property to local governments that WSAMA alludes to. WSAMA Br. at 11. Indeed, the *only* role regarding real property the Legislature assigned to the HEC Board was limited to the "purchase or lease of major off-campus facilities," Laws of 1985, ch. 370, § 50. The express limitation on the HEC Board's authority regarding acquisition of off-campus real property highlights the fact that the HEC Board had *no* authority regarding property the University already owned, and the HEC Board similarly had no authority regarding the siting, demolition or construction of facilities on any property, particularly on the University's campus.

WSAMA does not cite any facts that support its assertion that the Legislature intended for the HEC Board legislation to "put to rest UW's blanket immunity claim in *Seattle v. State*." WSAMA Br. at 11. Nothing in the 1985 Act or elsewhere indicates that the Legislature intended to overrule, or address in any manner, this Court's decision in the 1980 *State v. Seattle* case. To the contrary, the statute's legislative history explains why the Legislature included the phrase "otherwise provided by law": doing so was necessary to give effect to the limited authority the

Legislature assigned to the HEC Board. *See* CP 595-97. The 1985 law thus demonstrates that the Legislature knows how – and when – to amend a prior specific grant of authority. *Cf. Residents Opposed*, 165 Wn.2d at 309-10. Nothing suggests the Legislature intended this language to have any broader significance than enabling the former HEC Board to carry out its limited responsibilities.

The HEC Board was abolished in 2012, replaced by the Student Achievement Council, *see* CP 417, and the University is unaware of any other statute that diminishes the authority vested in the Board of Regents to exercise "full control" over University property.

B. The Legislature states when it intends for statutes to apply to institutions of higher education, as it did in each of the statutes WSAMA cites in support of its argument regarding the applicability of the GMA to the University.

The University established in its Response brief that, for the purposes of Section 103 of the GMA, it is a "state institution of higher education," not a "state agency." When the Legislature intends a law to apply to a state institution of higher education, particularly where that law must change a prior grant of authority in order to apply, the Legislature expresses that intent explicitly in statute. *See* Brief of Respondent at 40-41 (listing examples of statutes).

The Futurewise Brief suggests that under this interpretation, the Department of Commerce would be exempt from a provision of its own enabling legislation. Futurewise Br. at 4. But the reason the Legislature made sure to note that Commerce was included in the scope of agencies that could provide comments to enacting jurisdictions under the GMA, Futurewise Br. at 4 (quoting RCW 36.70A.106(1)), was that the context of the statute required it. That statutory provision appears to authorize agencies *other* than the agency charged with implementing the GMA to provide guidance; the context of the statute demanded clarity, which the Legislature provided. Section 103 of the GMA does not express such an intent to apply to the University.

Contrary to WSAMA's assertion, WSAMA Br. at 19-20 & n.22, the Public Records Act, SEPA, the Public Works statute, and the Public Employees Retirement System statute each apply to the University specifically or to institutions of higher education in general.[2] The Public Records Act defines "Agency" to include "every state office, department, division, bureau, board, commission, or other state agency," RCW 42.56.010(1), then specifically refers to "Financial and commercial

[2] The Court rejected the brief WSAMA originally filed, for improperly attaching evidence beyond that allowed by the RAP. While WSAMA's original brief included argument regarding SEPA, the Public Works statute, and the Public Employees Retirement System, the subsequently filed brief moved those arguments to a footnote that discusses SEPA, the Public Works statute, and the Public Records Act, but omitted the previous Public Employment Retirement System argument.

information submitted to or obtained by the University of Washington," RCW 42.56.270(20), and later to colleges and universities generally, RCW 42.56.320 (discussing "records or documents obtained by a state college [or] university" concerning grants and gifts). Similarly, the State Environmental Policy Act at RCW 43.21C.120(1) refers to "[a]ll agencies of government of this state," and Ecology's SEPA rules interpret the word "all" according to its plain meaning, so that "state agenc[ies]" include "state universities, colleges, and community colleges." WAC 197-11-796. The state Public Works statute provides that "[a]s used in this section, 'state agency' means . . . any institution of higher education as defined under RCW 28B.10.016." RCW 39.04.155(6). Finally, the Public Employees Retirement System includes plans that expressly apply to employees of "a state agency or institute of higher education." RCW 41.40.010(29)(a)(i)-(ii); RCW 41.40.785(1); RCW 41.40.795(2)(a). As WSAMA points out, the University complies with all of these statutes.

C. This case is not about an imagined parade of horribles, it is about the conflict between a specific statute and a specific ordinance.

Even if the University were a generic state agency, Section 103 of the GMA does not create a bright-line rule that says all state agencies must always comply with local development regulations adopted pursuant to the GMA: this Court decided otherwise in *Residents Opposed.* The issue is

one of legislative intent, and a specific delegation of authority to a state agency will prevail over the general rule in RCW 36.70A.103 unless there is evidence of a contrary legislative intent. *Residents Opposed*, 165 Wn.2d at 309-10. *Residents Opposed* is thus entirely consistent with this Court's pre-GMA decisions, such as *City of Everett v. Snohomish County*, 112 Wn.2d 433, 437-41, 772 P.2d 992 (1989), that hold legislative intent determines the question of which competing subunit of state government has jurisdiction over an issue.[3]

Just as Section 103 of the GMA does not create a bright-line rule with regard to all state agencies, the University does not ask this Court to create a bright-line rule with regard to state institutions of higher education. Amici's (and Appellants') parade of hypothetical horribles are irrelevant to the outcome of this case, because the issue is one of legislative intent that must be resolved in the context of specific statutes and ordinances: in this case, the contest between the Regents' authority under RCW 28B.20.130 and the City Council's authority under the LPO.

There is nothing hypothetical about the LPO. If it applies to the campus, most of the campus will no longer be subject to the Regents' "full

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[3] *Accord Edmonds Sch. Dist. No. 15 v. City of Mountlake Terrace*, 77 Wn.2d 609, 614-15, 465 P.2d 177 (1970) (legislature did not intend for school districts to be exempt from local building codes); *Snohomish Cnty. v. State*, 97 Wn.2d 646, 648 P.2d 430 (1982) (ruling county's attempt to zone a state penitentiary out of existence invalid because the legislature intended the Department of Corrections to make siting decisions).

control" because most of the campus is eligible for nomination and designation as a City landmark. CP 252 (map showing campus features at least 25 years old). If the LPO applies to the campus, it will not only take decision-making authority away from the Regents, it will prohibit the City's own decision-makers from considering any values other than historic ones, and thus all competing considerations, such as the academic needs of the University's departments, will become irrelevant.

The University does not argue, as WSAMA suggests, that the Legislature intends to preclude *all* local development regulations from applying to *any* state institution of higher education. Rather, the University argues that a specific ordinance, the LPO, cannot apply to the University campus without usurping the authority the Legislature granted to the Regents to govern University property.

It is no coincidence that this issue of the City's authority over University property has arisen only twice, and only relating to the LPO: this case and the 1980 *State v. Seattle* case. Because the LPO *prohibits* alterations of structures the City deems "historic," the LPO reaches farther than, and presents a problem not created by, any other historic preservation ordinance in the state, including the Department of

Archaeology and Historic Preservation's (DAHP) model ordinance.[4] Application of the LPO to the University would empower the Landmarks Preservation Board, the City's Hearing Examiner, and the Seattle City Council to overrule decisions of the Regents regarding the best use of University property, and no other regulation usurps the Regents' authority in such a way. Resolution of this case requires this Court to do no more than apply its existing tests regarding legislative intent to Chapter 28B.20 RCW, to RCW 36.70A.103, and to the LPO.

D. The University is committed to historic preservation on its campus and to adaptive reuse of its buildings.

Futurewise asserts that the University should, but does not, adaptively reuse its historic structures. Futurewise Br. at 9-11. The Futurewise Brief goes so far as to state, in disregard of the evidence in the record, that the University "ignores a body of thinking about wise adaptation and reuse of historic structures." *Id.* at 9. In fact, both the evidence in the record and judicially noticeable sources demonstrate that the University does reuse its buildings, and that the Board of Regents decided to demolish More Hall Annex only after first considering and rejecting adaptive reuse.

[4] *See* Response to DAHP Brief at 6-12.

The University of Washington could not have successfully operated on its campus for more than a century without retaining – and reusing – many of its original buildings. Cunningham Hall[5] and the Mechanical Engineering Annex,[6] for example, were each built for the 1909 Alaska Yukon Pacific Exposition, and are in use today for very different purposes than they were designed for. The former Women's Gymnasium at Hutchinson Hall became the home of the University's Drama Department – possibly the only drama department in the country that, until recently, featured a full-length swimming pool.[7] The National-Register-listed shell house of *Boys in the Boat* fame no longer houses the Crew or the Pocock boatbuilding shop, but still serves students recreating at the Waterfront Activities Center.[8] The University's former law

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[5] *See* BOLA Architecture + Planning, *Cunningham Hall Historic Resources Addendum* (2008), *available at* https://cpd.uw.edu/cpo/sites/default/files/file/Cunningham%20HRA.pdf (last visited May 18, 2017). Cunningham Hall was one of the "significant campus elements" that was part of the 1909 Alaskan Yukon Pacific Exposition Plan. CP 257.

[6] The Mechanical Engineering Annex "is one of the few reaming buildings constructed during the 1909 AYP Exposition." CP 288.

[7] *See* BOLA Architecture + Planning, *Hutchinson Hall Historic Resources Addendum* (2012), *available at* https://cpd.uw.edu/cpo/sites/default/files/file/Hutchison%20HRA%20Final%20p%20%201-24%20June%208%202012.pdf (last visited May 18, 2017).

[8] *See* https://www.washington.edu/ima/waterfront/asuw-shell-house/ (last visited May 18, 2017).

building, Condon Hall,[9] provides swing space for a variety of non-law-related programs. The list goes on.

Given this strong tradition of adaptive reuse of existing buildings, and in light of the acknowledged historic import of the More Hall Annex, the Regents and University staff examined the possibility of adaptive reuse of that building, as well. The University committed significant resources to studying the possibility: of the three alternatives studied in the Environmental Impact Statement (EIS) for the More Hall Annex site, two would have retained the structure, either separately from the new building or integrated within it. CP 268 ¶ 11.[10]

Contrary to Futurewise's unsupported assertion that "adaptive reuse should enable UW to attain its goals while preserving landmarked structures," Futurewise Br. at 10, neither staff nor the Regents, after studying the question, could find a successful way to make academic use of an oddly shaped, 6,500 square-foot concrete structure that was purpose-built to house a nuclear reactor. The Board of Regents made its decision to demolish the building only after considering adaptive reuse, and neither

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[9] Condon Hall, constructed in 1973, is one of the six Brutalist buildings on the University's campus. CP 296.

[10] The EIS also studied two alternative designs at a different site on campus, meaning four of the five alternatives studied would have left some portion of the More Hall Annex intact. CP 268.

Appellants nor amici nor anyone else challenged the adequacy of the EIS or the Regents' decision.

Futurewise's suggestion that the Regents would adaptively reuse buildings *only if the LPO applied on campus* is belied by the campus itself, as well as the Regents' decision in this case. The campus is a model of thoughtful integration of old and new, and this remarkable place exists because of decades of decision-making by the Regents, despite the LPO not having ever applied to the campus.

III. CONCLUSION

A ruling in favor of Appellants and amici will mean that a policy choice made by the 1977 Seattle City Council – that historic values are more important to the people of Seattle than all other values – will determine the future of the State's University. There is *no* evidence that the Legislature intended to overrule *State v. Seattle* in order to allow the City to make such a policy choice.

For all of the reasons briefed by the University before Division I and this Court, the University asks this Court to affirm the trial court and allow the Board of Regents to continue to weigh and balance all competing considerations, including historic preservation, when deciding how the campus should be used to educate the people of the State.

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Respectfully submitted this 23rd day of May, 2017.

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DECLARATION OF SERVICE

I hereby certify that on the 23rd day of May, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send notification of such filing to the following, and served a copy by the method indicated below:

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DATED this 23rd day of May, 2017.

/s/ Nikea Smedley
Nikea Smedley

FOSTER PEPPER PLLC

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